Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	FCC 97-356
Communications Assistance for	)	CC Docket No. 97-213
Law Enforcement Act	)	

Comments of Sprint Spectrum L.P. d/b/a Sprint PCS

I. Comments on Carrier Security Policies and Procedures

Many carriers like Sprint Spectrum already have policies and practices in place substantially similar to those proposed by the FCC. Sprint Spectrum generally concurs with the FCC's conclusions in paragraphs 26, 29 through 33, but believes that all carriers should only be required to make a reduced compliance filing. Sprint Spectrum supports either form of reduced filing requirement. Because of the significant liability already prescribed by statute, most carriers, especially the larger carriers, already have in place practices and procedures designed to prevent unauthorized interceptions or access to call-identifying information. Requiring carriers to submit policies and practices to the FCC is unnecessarily burdensome. A reduced filing requirement, together with a requirement that carriers retain records and produce them as necessary to the FCC to ensure CALEA §105 practices compliance, in the event there is a question about a particular carrier's policies and practices, would serve the objectives of §§105 and 229 and protect users of telecommunications service, especially given the remedies and significant liability that are already prescribed by statute for unauthorized interceptions.

Sprint Spectrum objects to the proposed rule requiring carriers to retain records for ten years. A more reasonable duration should be required that is more in line with record keeping requirements carriers already have in place. The Department of Labor, for example, requires five year record retention, and financial records are typically retained between three and seven years, depending on the nature of the record. Sprint Spectrum proposes a five year record retention period.

With respect to paragraph 27 of the NPRM, Sprint Spectrum respectfully submits that the FCC has no authority to issue rules under §229 of the Communications Act to extend vicarious liability on employers under §§2511 and 2520 of the Electronic Communications Privacy Act (ECPA). Section 229(a) of the Communications Act states: "The Commission shall prescribe such rules as are necessary to implement the requirements of the Communications Assistance for Law Enforcement Act." Sections 2511 and 2520 are not part of CALEA, but of ECPA. Moreover, CALEA only amended §2511(2)(a)(i) and (4)(b). The amendment to §2511(2)(a)(i) was only a "technical correction," clarifying what is a lawful act. Section 2511(2)(a)(i) states that it is not unlawful for an officer, employee, or agent of a provider of wire or electronic communication service to intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of this service or to the protection of the rights or property of the provider of that service. The "technical correction" extended protection from liability to electronic communications service providers, as well as wire communications service providers. Section 2511(4)(b) only addresses penalties for monitoring radio communications that are

transmitted using certain modulation techniques, which does not appear to be an issue here.

In any event, §105 of CALEA only concerns the obligation of telecommunications carriers to put practices into place that ensure any interception of communications or access to call-identifying information can be activated only in accordance with a court order or other lawful authorization. Section 105 itself does not address unlawful interceptions. Unlawful interceptions, as opposed to the obligation to put policies and practices into place, are addressed in §§2511, and civil remedies and criminal penalties for violating §2511 are already prescribed in §§2511 and 2520. Congress did not intend, could not have intended, to delegate any authority to the FCC to impose civil or criminal penalties for violation of §2511. At most, §§105 and 229 permit the FCC to promulgate rules concerning telecommunications carriers' practices and procedures designed to prevent unlawful interceptions or access to call-identifying information.

Even assuming for the sake of argument that the FCC could somehow lawfully use §§105 and 229 to extend vicarious criminal and civil liability to a carrier, if a carrier's employees are convicted of intercepting communications illegally, both criminal and civil offenses under §§2511 and 2520 require intent. So, an employer could not be held strictly liable for the act of the employee, but the employer would have to have the requisite intent, too.

II. Comments on Adopting Technical Standards

The Center for Democracy (CDT) and Technology, and the Electronic Frontier Foundation (EFF) correctly point out that the intent of Congress in adopting CALEA was

to preserve, but not to expand, government surveillance. In this respect, companies like Sprint Spectrum are already able to offer law enforcement traditional electronic surveillance capabilities.

However, law enforcement has insisted upon, and continues to insist upon very expensive, intrusive, enhanced surveillance features that are not required by CALEA. The telecommunications industry has cooperated with law enforcement, not only by trying to build their systems to offer traditional electronic surveillance capabilities, as Sprint Spectrum has done, but they also have worked with law enforcement in telecommunications industry forums. For example, as the FCC points out in its NPRM, a subcommittee of the Telecommunications Industry Association has since early 1995 been working to develop a technical standard for the assistance capability envisioned by CALEA. Law enforcement participated in the TIA standards process. As CDT and EFF point out in their August 11, 1997 comments on CTIA's Petition for Rulemaking, law enforcement has attempted to dominate the CALEA industry standards process, but TIA finally approved Standards Proposal 3580A – about 40 industry participants affirmed the SP 3580A.

As Sprint Spectrum understands it, SP 3580A will be a joint interim industry standard and trial use standard between TR45.2 and Committee T1 sponsored by ATIS, called J-STD-025. At the time of the filing of these comments, it is expected that J-STD-025 will have been published. The J-STD-025 has been submitted to ANSI, too, for approval.

Despite substantial industry effort, which law enforcement was involved in, law enforcement wants ten additional "punch list" features that are not required by CALEA

and not part of the joint industry standard. As Sprint Spectrum understands it, law enforcement would not attempt to block the joint industry standard, if the industry agrees now agrees upon additional features that are not required by CALEA. The additional ten "punch list" items are described in CDT and EFF's August 11, 1997 Response to CTIA's Petition for Rulemaking.

However, under §107 of CALEA, a telecommunications carrier shall be found to be in compliance with the assistance capability requirements if the carrier is in compliance with publicly available technical requirements or standards adopted an industry association or standard-setting organization to meet the capability requirements. Absent an objection to the industry standard and a petition to the FCC to establish by rule, technical requirements or standards, the FCC does not need to establish such a rulemaking, and carriers that comply with J-STD-025 are in compliance with CALEA's capability requirements.

Respectfully submitted,

Joseph R. Assenzo
General Attorney
Attorney for Sprint Spectrum L.P.
d/b/a Sprint PCS
4900 Main St., 12th Floor
Kansas City, MO 64112
(816)559-2514

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